



MEMORANDUM

TO: Mayor and Council

CC: Marc A. Ott, City Manager
Robert Goode, P.E., Assistant City Manager

FROM: Robert Spillar, P.E., Director,
Austin Transportation Department

DATE: December 11, 2015

SUBJECT: CIUR 1663 – Transportation Network Company (TNC)
Background Checks

On October 15, 2015, Mayor and Council adopted resolution 20151015-051 directing the City Manager to initiate code amendments related to criminal background checks for Transportation Network Companies (TNC). Austin Transportation Department (ATD) staff was asked to produce a report regarding 1) the effectiveness of fingerprint-based (biometric) and name-based background checks and make a recommendation for which process best protects public safety. Additionally staff was directed to 2) analyze the impact of adopting either of those background check processes and include options for mitigating any impacts.

Criminal Background Check Best Practices

A recent national report entitled “*One Standard for All*,” conducted by the College of Criminal Justice with City University of New York (CUNY) (May, 2015), reviewed various U.S. city criminal background check practices for all vehicle for hire drivers and public safety concerns from New York, Houston, Chicago, Boston, Seattle and Miami, and the states of California and Colorado. The study concluded that governments “should use biometric fingerprints, not name checks that are less accurate.”

Name-based background checks do not access state and FBI fingerprint databases, as shown in the “*One Standard for All*” report. The report states that Transportation Network Companies policy of “relying on name checks for checking courthouse records, multi-state criminal records and driving records opens them up to the possibility of errors -- perhaps to the possibility that at least 12% of their new drivers each year have a federal offense listed in their criminal record.” In addition, name-based checks can be defrauded with aliases and false identifications.

The City of Houston also conducted extensive research on the effectiveness of background checks, and in November 2014 adopted a new TNC ordinance stating “the City requires all vehicle-for-hire drivers to undergo 10-year, fingerprint-based, criminal history background checks.”

Staff Recommendation

Consistent with best practices for public safety, a nationwide fingerprint background check should be required for TNC drivers, and applied as the standard for all ground transportation vehicle operators, including taxi, limousine, and pedicab operators. This can be achieved by amending the Austin City Code and establishing a relationship with a third-party provider to capture fingerprints to initiate the biometric background check process.

The City of Houston requires a national fingerprint background check. In order to accommodate the TNC operators in Houston with their “on-boarding” process of new driver affiliates, the City of Houston adopted a 30-day provisional TNC license, pending a fingerprint based background check. The driver applicant would still have to show evidence of a name-based background check provided by the TNC in order to get the 30-day provisional license. Staff recommends adoption of a similar process for Austin.

Background

The City of Austin Ordinance #20141016-038 enabled a process for TNCs to enter into agreements with the City Manager. This pilot program has been in effect for one year and although there has been valuable data gained during this pilot period, there have been no authoritative criminal background checks for TNC drivers. Currently, TNC companies do not share the names of their drivers.

The City of Houston developed a comprehensive report about criminal background checks in a report entitled “*Safety, Effectiveness & Best Practices for Vehicle-for-Hire Criminal Background Checks*,” Sept. 2015. When comparing commercial national background checks (name-based) to fingerprint background checks, their research indicated that commercial background checks can be incomplete due to gaps in their data sets. For example, Hirease, a third-party provider conducting national searches for TNC name-based background checks, does not include data from Delaware, Massachusetts, South Dakota, or Wyoming. Additionally, it was indicated that Sterling Infosystems, another commercial background provider for TNC name-based background checks, does not include data from California, Louisiana, Mississippi, or Wyoming in their background searches for state criminal records.

In the Houston report, the City of Houston provided some observations regarding differences noted with TNC drivers that underwent both types of criminal background check processes. For example:

- A recent TNC driver, who had been cleared by Hirease (a company which does name-based background checks), underwent a City of Houston fingerprint background check. Results showed she had 24 alias names, 5 listed birthdates, 10 listed social security numbers, and an active warrant for arrest.
- Several TNC drivers previously on-boarded by the TNC that submitted to fingerprint background checks had a prior criminal history. Some of the charges included: Murder, aggravated robbery, assault, larceny, battery, violation of probation, racketeering, sale of alcohol to a minor, indecent exposure, traffic of counterfeit goods, DWI/DUI, and unlawful carry of a weapon.

The Houston report concludes “TNCs may have a zero tolerance policy when it comes to criminal history of any kind; however, that policy is hard to enforce when the background check fails to identify the criminal record.”

As has been adopted in Houston, ATD also recommends outlining a list of offenses which would disqualify a potential candidate from operating a vehicle-for-hire. This would set out a clear expectation to anyone interested in becoming a driver as to what entries in a criminal background would preclude them from becoming a driver. This potential code change could affect some existing ground transportation drivers under the city's current process which allows re-entry to the workforce after conviction or incarceration for certain felonies.

Analysis of Potential Adoption of Specific Background Processes

Adoption of a national fingerprint background check for all vehicles for hire drivers would create a uniform standard for all drivers and companies. The current TNC companies in Austin have indicated they are opposed to fingerprint criminal background checks and have stated they may leave the Austin market if fingerprints are required. During the course of several public meetings, the predominant reaction from TNC drivers has been an expressed desire to continue to maintain the opportunity to earn supplemental income driving for TNCs. ATD staff suspects that when TNC company SideCar left the Austin market in approximately 2013/14, the current TNC operators for Uber and Lyft hired former SideCar drivers. ATD staff believes that should either of the current TNC operators leave the Austin market, a new TNC that wishes to secure a permit to operate would have access to a driver pool of up to 15,000 drivers. Staff notes that Houston has had fingerprint-based criminal background checks for more than a year and the market is currently served by Uber. The City of Houston reports other TNCs are trying to enter the market in conformance with their finger print policy.

In addition to the impact to TNCs and drivers, the City of Austin will see increased demand for applications. This will generate a need for enforcement services to assure TNC operators and drivers perform in accordance with the TNC ordinance. Working with Houston regulatory officials, Austin has learned that the adoption of a TNC ordinance created a large influx of new applicants for TNC licenses. Houston had to double its permitting staff immediately for processing applications. The Houston regulatory division is requesting additional enforcement and customer service staff to meet the needs of the new system. Based on Uber's announcement in Houston that they were adding 5,000 drivers, the Houston permitting office estimated a need for two additional full time customer service staff. Houston adopted a two percent fee on TNC gross revenues for management and enforcement of the new system, as allowed by State law. Austin staff believes we would see a similar staffing need here in Austin.

The following are responses to key questions raised:

- 1) What is City Staff's recommendation regarding the effectiveness of effectiveness of criminal background checks for fingerprint-based and name-based criminal background check processes, and a recommendation for which process best protects public safety?.**

The Austin Transportation Department recommends fingerprint-based background checks over name-based background checks which are less accurate, as discussed in detail in the memo to Mayor and City Council.

In a Dec. 10, 2015 [story](#) in the Austin-American Statesman, Texas Department of Public Safety Director Steve McCraw said to the Texas State Affairs Committee that **'fingerprints are an important tool to identify people in criminal cases compared to "the much less reliable process of matching names."**

<http://www.statesman.com/news/news/state-regional-govt-politics/steve-mccraw-says-tea-party-backed-law-hampering-t/npg4X/>

- 2) What is the relative risk to public safety of doing a background check other than fingerprinting versus the relative risk to public safety of adopting a finger printing requirement that might lead to the withdrawal of Uber and Lyft from the Austin market?**

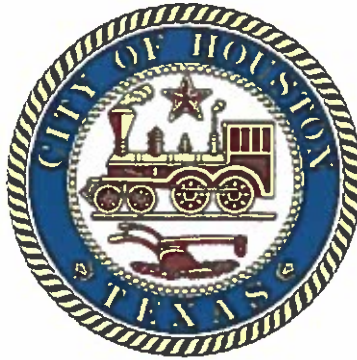
Responding to the question of whether Uber and Lyft will cease operations if the City requires fingerprints and how would we mitigate: Uber has indicated they will leave the market.

However the City of Houston was able to reach a compromise and Uber remains operating in Houston. Uber worked with the City of Houston to streamline the application/background check process.

Austin Transportation staff has recommended the same mitigating process, essentially to assist with a quicker on-boarding of drivers pending a full fingerprint background check for 30 days.

- 3) If Uber and Lyft leave the Austin market will there be one or more TNC's that will be able to step in and provide coverage and scale with this technology so as to mitigate any risk to public safety that would otherwise occur?**

A new TNC has secured an agreement with the COA and has expressed that they do not oppose the recommended regulations (including fingerprint background checks). They plan to launch next week in Austin. At least one TNC company other than Uber and Lyft currently operates in Houston and Dallas. Their technology and scalability has the same capacity as the existing TNCs.



Safety, Effectiveness & Best Practices for Vehicle-for-Hire Criminal Background Checks

Tina Paez, Director

Administration & Regulatory Affairs Department

City of Houston

Plenary Session 3: "One Standard for All" – Safety, Effectiveness & Best practices for Taxi, For Hire & TNC Driver Criminal Background Checks

2015 IATR Conference

Montreal Marriot, Chateau Champlain

September 28, 2015

2:30 PM - 4:00 PM



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Exhibit I: City of Houston Research Summary on Criminal History Background Checks



City of Houston
Administration & Regulatory Affairs Department
Criminal History Background Checks:
Research Summary as of 4/7/2015

Introduction

Despite assurances from TNCs that commercial background companies conduct criminal background checks at least comparable to the ones run by municipalities, but usually even more thorough, in fact these background checks are incomplete. Following are the specific deficiencies in these private criminal history checks based on our research and the commercial background check providers' website information:

- **NOT National Background Checks:**
 - Hirease "national criminal search" check does not include Delaware, Massachusetts, South Dakota, Wyoming
 - Sterling Infosystems "state criminal records search" does not cover California, Louisiana, Mississippi or Wyoming
 - Do not search every county, creating potential gaps
- **DO NOT use truly unique search identifiers, i.e. fingerprints**
 - Many are name-based; or they use the basic identifiers used for credit checks, i.e. social security numbers, past counties of residence, voter records. These are basically skip trace and credit check companies.
 - Because they do not use a biometric identifier, these companies miss applicants that use aliases. For example, a recent TNC driver, **who had been cleared by Hirease**, underwent a City of Houston fingerprint background check and it turned out she **had 24 alias names, 5 listed birth dates, 10 listed social security numbers, and an active warrant for arrest.**
 - Even Hirease, the company that performs commercial third party background checks for Uber, admits that fingerprint-based checks are more secure because *"fingerprinting helps uncover criminal history not discovered through traditional means, offers extra protection to aid in meeting industry guidelines, and helps prevent fraud"* (www.hirease.com/fingerprinting).



- In the 10 months since Houston's ordinance became effective, the City's fingerprint-based FBI background check found that several applicants for TNC driver's licenses – who had already been cleared through a commercial criminal background check – had a prior criminal history. The charges include:
 - Murder
 - Assault
 - Battery
 - Racketeering
 - Indecent exposure
 - DWI/DUI
 - Possession of a controlled substance
 - Prostitution
 - Fraud
 - Robbery
 - Aggravated Robbery
 - Larceny
 - Violation of Probation
 - Sale of alcohol to a minor,
 - Traffic of counterfeit goods
 - Unlawful carry of a weapon
 - Reckless Driving
 - Public intoxication
 - Driving with a suspended license
 - Unauthorized use of vehicle
- TNCs may have a zero tolerance policy when it comes to criminal history of any kind; however, that policy is hard to enforce when the background check fails to identify the criminal record.

National Background Checks

The background checks conducted by firms such as Hirease and Sterling are NOT true national checks. Commercial background checks are based on the personal information of the applicant, including name and social security number. These companies typically use the applicant's social security number to identify past counties of residence. The company then searches the courthouse records of these and surrounding counties. However, as these checks do not search every county, they create a huge potential gap where crimes go undetected.

In order to supplement these county checks, commercial background companies often rely on commercial "national databases" composed of records collected from the various state criminal record repositories. However, these databases do not contain information from all states and pale in comparison to the scope of the background check conducted by the FBI. For example, the "national criminal search" conducted by Hirease does not cover Delaware, Massachusetts, South Dakota, or Wyoming. The "state criminal records search" conducted by Sterling Infosystems does not cover California, Louisiana, Mississippi, or Wyoming. **The FBI provides the only true nationwide check.** TNCs claim that regional processing times mean that the FBI database is not always 100% up-to-date and therefore imply that background checks conducted through the FBI cannot be trusted. However, the US Attorney General's Office concludes that the FBI database, *"while far from complete, is the most comprehensive single source of criminal history information in the United States."* More so, neither the TNCs nor their commercial background check providers have demonstrated that their commercial databases are immune to these same criticisms. In fact, the US Attorney General's Office goes on to point out that *"in many instances the criminal history record information available through a commercial check is not as comprehensive as an [FBI] check because many states do not make criminal history records available to commercial*



database compilers.” Both Hirease and Sterling have failed to demonstrate the efficacy of their non-fingerprint based criminal history checks.

Fingerprint Background Checks

Commercial background check companies do not use biometric identifiers to match an applicant with his or her record. This substantially increases the twin risks of false positives (when a person with a common name is associated with another person’s record) and false negatives (when a record is missed because an individual provides false identifying information). A national taskforce compared the efficacy of name-based and fingerprint-based background checks using the FBI Interstate Identification Index database. The taskforce found that *“based on name checks alone, 5.5 percent of the checks produced false positives and 11.7 percent resulted in false negatives.”* (U.S. Dept. of Justice 2006, p. 25).

The City of Houston’s TNC ordinance has been effective since November 4, 2014. In the approximately 10 months since the ordinance went into effect, **the City’s fingerprint-based FBI background check found that several applicants for TNC driver’s licenses – who had passed a commercial criminal background check – had a prior criminal history. The charges include: murder, assault, battery, racketeering, indecent exposure, DWI/DUI, possession of a controlled substance, prostitution, fraud, robbery, aggravated robbery, larceny, violation of probation, sale of alcohol to a minor, traffic of counterfeit goods, unlawful carry of a weapon, reckless driving, public intoxication, driving with a suspended license and unauthorized use of vehicle.** TNCs may have a zero tolerance policy when it comes to criminal history of any kind; however, that policy is hard to enforce when the background check fails to identify the criminal record.

All criminal justice record information ultimately originates from one of four primary government sources: law enforcement agencies, the courts, corrections agencies, and prosecutors. Although commercial background check providers claim to obtain data from multiple private databases, these extra databases do not necessarily add value to the background check process. If a single database, like the FBI database, reliably gathers information from these primary sources, then searching further databases is unnecessary and redundant. Commercial background check companies search multiple databases in order to pad their resume in comparison to the FBI’s comprehensive database. Private databases may not reliably and regularly collect information from all primary sources in all states.

COMPARISON OF MUNICIPAL CRIMINAL HISTORY CHECK VS. PRIVATE SECTOR PROVIDERS				
Scope of Record Review	MUNICIPAL*	Hirease	Sterling	Note
50-state National Criminal Records Search	✓	Excludes Delaware, Massachusetts, South Dakota, Wyoming	Excludes California, Louisiana, Mississippi, Wyoming	Many states do not make criminal history records available to commercial database compilers
Search of all counties	✓	X	X	

*Note: The City of Houston requires a fingerprint background check through the State DPS which gets information from the FBI database. For the most up-to-date local arrest information, Houston requires driver applicants to present themselves to our Municipal Courts for a warrant check. Houston’s national search through the DPS includes the national sex offender registry.



Exhibit II: Assertions vs. Facts – What Transportation Network Companies Traditionally Assert About Criminal Background Checks



Assertions vs. Facts: Transportation Network Companies and Criminal History Checks

TNC Assertion: The FBI background check does not check the National Sex Offender Registry.

Fact: The National Sex Offender Registry (NSOR) is a government database available only to law enforcement that is maintained by the FBI's Criminal Justice Information Services Division. Thus the FBI already has complete access to information on sex crimes and has no need to search a separate database. It is also impossible for any private entity to search the NSOR.

Because the NSOR is only available to law enforcement, the Department of Justice also maintains the National Sex Offender Public Website (NSPOW). Unlike the NSOR, which contains complete information on sex offenders, the NSPOW only contains publicly available information. Several states have laws that allow sex offenders to apply for an exemption from being reported on the publicly-available website. For instance, the NSPOW omits approximately 25% of the registered sex offenders in California.

A private company can only search the publicly available information in the NSPOW. It cannot search the NSOR maintained by the FBI. The FBI has no need to search a separate database, because it already has records on this information.

TNC Assertion: Commercial criminal history checks include a "multi-database" or "multi-layer" search and are superior to the FBI criminal history check.

Fact: Commercial criminal history checks often tout that they conduct a "multi-database" or "multi-layer" search, implying that they are therefore superior to the FBI database. The FBI database, however, is the single most comprehensive source of criminal history information in the nation. The FBI has no need to search multiple databases, because they already gather information from the primary originators of criminal history information—courts and law enforcement agencies.

TNC Assertion: The FBI database is missing information and is thus unreliable.

Fact: It can take several years for a court case to work its way through the criminal justice system. If a record is missing final disposition information, in many cases it is because final disposition does not yet exist for that record. More so, because the FBI database has complete access to criminal history information final disposition information is not needed to protect public safety. The presence of an arrest record alone is enough to flag an applicant for further investigation.

TNC Assertion: Commercial database companies have access to the same criminal history information as government agencies.

Fact: Private companies can only get access to information in the FBI and state criminal history databases that has been made publicly available. This means that they do not have the ability to view all records, including unadjudicated arrests and juvenile records. Government agencies, on the other hand, have the



ability to see this information and take it into account during the licensing process. The only way for a vehicle-for-hire driver to undergo this type of check is if a government body acts as a regulatory authority.

TNC Assertion: Commercial criminal history checks are true national checks.

Fact: Commercial criminal history companies represent themselves as conducting nation-wide checks. They claim that these checks are national in scope because they search county courthouse records in combination with multi-state databases. Commercial background check companies use non-biometric identifiers, such as the applicant's name, social security number, and date of birth, to identify past counties of residence. The commercial background check provider then searches the records for these counties. They do not search the records of all counties for all applicants. A crime committed in a county in which the applicant did not reside may go unreported.

The commercial multi-state databases used to supplement these piecemeal county checks are also not truly national in scope. The "national criminal search" conducted by Hirease, one of Uber's commercial background check providers does not cover Delaware, Massachusetts, South Dakota, and Wyoming. The "state criminal records search" conducted by Sterling Infosystems, Lyft's commercial background check provider, does not cover California, Louisiana, Mississippi, or Wyoming. These gaps lead to serious According to the District Attorney's Office in San Francisco, Uber's background check approved a driver who was convicted of felony exploitation of children in Wyoming on November 7, 2005.



Exhibit III: What does the U.S. Attorney General Really Say about Criminal History Checks?



What Does the US Attorney General Really Say About Criminal History Checks?

Background

The City of Houston believes that, to the greatest extent possible, regulations regarding the use of fingerprint background checks vs. name-based or other background checks should be based on empirical data and objective facts. As such, the City extensively researched the efficacy of various criminal history checks. Although actual data comparing the failure rate of various checks was scarce, the US Attorney General's Office issued a report in June 2006 that, to the City's knowledge, is one of the best resources on fingerprinting and the efficacy of various criminal history checks.

Being familiar with this report is important not only because it can serve as a guide to drafting better regulations for public safety, but because marketing materials routinely distributed by Transportation Network Companies (TNCs) selectively cite the report to imply support for their policy positions. When read in its entirety, however, the report's conclusions are clear. The Attorney General recommends expanded use of the FBI data, not less. The report does not recommend the use of private criminal history databases in lieu of a check conducted by the FBI.

The Importance of Fingerprints

The report consistently stresses the importance of basing criminal history checks on positive biometric identification, such as fingerprints. Criminal history checks "have generally been required to be supported by fingerprints in order to substantially reduce the twin risks posed by name checks [non-biometric checks], which can result in false positives or false negatives.¹" A study conducted in Florida in 1998 confirmed this risk. The study "found that based on name checks alone, 5.5 percent of the checks produced false positives and 11.7 percent resulted in false negatives. These results would have translated into large absolute number of false positives and false negatives if the 6.9 million civil applicant background checks processed by the FBI in 1997 had been processed by...name checks alone.²" Due to this risk, the report officially recommends that "checks should be based on fingerprints.³"

Commercial Criminal History Databases

Although commercial criminal history databases can act as a valuable supplement to a check conducted through the FBI database, the report identifies several shortcomings that make them unsuitable as the only source of criminal history information. "Searches of commercially available databases are name-based [non-biometric] and do not provide for positive identification through a fingerprint comparison. As a consequence, the matching of individuals to a record is not as reliable as a fingerprint check.⁴" The laws governing the information available to a commercial database also vary from state to state. "In many

¹ Page 3

² Page 25

³ Page 7

⁴ Page 53



instances, the criminal history record information available through a commercial check is not as comprehensive as an [FBI] check because many states do not make criminal history records available to commercial database compilers. Also, states that do contribute criminal history records to commercial databases may not do so on a regular basis. As a result, some information in commercial databases may not be as timely as the information available through the [FBI].⁵

The FBI Database

The report acknowledges that no criminal history database is perfect. The report finds, however, that “nevertheless, the [FBI database]...is the most comprehensive single source of criminal history information in the United States, and provides users, at a minimum, with a pointer system that assists in discovering more complete information on a person’s involvement with the criminal justice system.”⁶ At no point does the report advocate for using a commercial background check database in lieu of the FBI database. In fact the report officially recommended that access to the FBI’s criminal history information be offered to private employers. The Office of the Attorney General “think[s] that the fingerprint-based criminal history information maintained by the FBI and state record repositories should be one of the authorized sources of information for this purpose, as system capacity allows.”⁷ Ultimately the report recommends increasing the use of the FBI database, not replacing it.

Conclusions

The report acknowledges that both the FBI database and commercial databases have a role to play in conducting criminal history checks. “A check of both public and commercial databases and of primary sources of criminal history information such as country courthouses would, perhaps, provide the most complete and up-to-date information.”⁸ The value of the FBI database, however, is not contested by the report and at in no way can the report be construed as advocating a minimized role for the FBI database or for fingerprinting. Because governmental agencies are the only organizations with complete access to the information in the FBI database, it is important that regulatory bodies require this check of anyone who intends to provide transportation service to the general public.

⁵ Page 54

⁶ Page 17

⁷ Page 7

⁸ Page 54



Exhibit IV: Excerpt from San Francisco False Advertising Suit

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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 CITY AND COUNTY OF SAN FRANCISCO
18 UNLIMITED JURISDICTION

19 THE PEOPLE OF THE STATE OF
CALIFORNIA,

20 Plaintiff,

21 vs.

22 UBER TECHNOLOGIES, INC., a Delaware
Corporation; RASIER, LLC, a Delaware
23 Limited Liability Company; RASIER-CA,
LLC, a Delaware Limited Liability Company;
24 and DOES 1 through 100, inclusive,
25
26 Defendants.
27

ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
08/18/2015
Clerk of the Court
BY: WILLIAM TRUPEK
Deputy Clerk

Case No. CGC-14-543120

FIRST AMENDED COMPLAINT FOR
PERMANENT INJUNCTION, CIVIL
PENALTIES, RESTITUTION AND
OTHER EQUITABLE RELIEF

Business & Professions Code
Sections 17200 *et seq.* & 17500 *et seq.*

1 Uber vehicles. Parents' increasing reliance on Uber to shuttle their children from school to sports
2 practice, music lessons and after-school activities has been reported in national news-media
3 articles such as the Washington Post's March 10, 2015 article, "Harried Parents Embracing Uber
4 To Move Kids Around Town," the Wall Street Journal's December 17, 2014 article, "Uber Is the
5 New Family Chauffeur - Teens Gain Independence; Parents Track the Rides," and the New York
6 Times' April 17, 2015 article, "For Some Teenagers, 16 Candles Mean It's Time to Join Uber."

7 73. When confronted through the discovery process in this enforcement action with the
8 fact that Uber's background check process has systemic deficiencies that prevent Uber from
9 identifying a large number of sex offenders, Uber made assertions designed to mislead consumers
10 into believing that Uber's process is as comprehensive as the Live Scan/CALDOJ Process. The
11 Sullivan blog continues to lie to the public and assert that Uber searches the National Sex Offender
12 Registry. The Sullivan blog also falsely claims that not every registered sex offender appears on
13 the California Department of Justice's registry of sex offenders, and thus creates the implication
14 that the Live Scan/CALDOJ Process will also, like Uber's process, miss approximately 25% of
15 registered sex offenders in California. The CALDOJ/Live Scan background check process
16 identifies all convictions, including sex offenses, without time limitation.

17 *Drivers With Disqualifying Criminal Histories Pass Uber's Background Check*

18 74. Since the filing of the original Complaint eight months ago, the People have received
19 records of Uber drivers who were issued citations by airport police at San Francisco and Los
20 Angeles International Airports and the Los Angeles Police Department's Bandit Cab detail. From
21 this small sample, the People have identified drivers with disqualifying criminal histories or
22 driving records who nonetheless passed Uber's background check. The criminal histories include
23 convictions for murder, sex offenses, kidnapping, assault, robbery burglary, fraud, and identity
24 theft. The individuals' driving records include convictions for driving under the influence, driving
25 with a suspended license, and reckless driving, as well as individuals who had more than three
26 DMV points within the preceding three years. What follows is a sample of the drivers who passed
27 Uber's background check process despite having criminal histories and driving records that are

1 disqualifying under Uber's own representations, PUC rules and regulations, and/or the rules and
2 regulations applied by local taxi regulators.

3 75. Uber Driver # 1 was convicted of second degree murder, a felony, in Los Angeles in
4 1982. After spending 26 years in prison, he was released on parole in 2008. He applied to drive
5 for Uber using a different name than the name appearing on the court records relating to his
6 murder conviction. A background report generated by Hirease on November 10, 2014 states that
7 Driver # 1 had no known aliases. The background report shows no criminal history for Driver # 1.
8 In November of 2014, less than seven years after being released from prison, he became an Uber
9 driver. Uber Driver #1 drove for Uber in Los Angeles until May 28, 2015 and provided 1,168
10 rides to consumers. California law allowed Hirease to report Uber Driver #1's criminal history to
11 Uber, since he was released from prison within seven years of the Uber background check. Uber's
12 background check process did not identify Driver #1's murder conviction because Uber's process
13 (a) does not utilize a unique biometric identifier, (b) does not access criminal record repositories
14 that allow for the tracking of individuals using aliases, and (c) does not actually go back as far as
15 the law allows. The Live Scan/CALDOJ Process does not have the same limitations and would
16 have identified Driver # 1's criminal history.

17 76. Uber Driver # 2 was convicted of committing lewd or lascivious acts against a child
18 under 14, a felony, on July 25, 1999. He is required to register as a sex offender in the State of
19 California. He applied for, and was granted, exclusion from the California Megan's Law Website.
20 And his name does not appear on the NSOPW. In February of 2014, he applied to drive for Uber.
21 A background report generated by Hirease on February 17, 2014 did not uncover Driver # 2's
22 conviction for lewd or lascivious acts with a child under 14, or the fact that he is a registered sex
23 offender. Driver # 2 drove for Uber until May of 2015. He provided 5,697 rides to Uber
24 passengers, including unaccompanied children. Uber's background check process did not identify
25 Driver # 2's conviction or his status as a registered sex offender because Uber's process (a) does
26 not access criminal record repositories of unlimited duration and (b) does not access databases
27 with complete criminal history information. The Live Scan/CALDOJ Process does not have the

1 same limitations and would have identified Driver # 2's criminal history.

2 77. Uber Driver # 3 was convicted of felony sexual exploitation of children in Wyoming
3 on November 7, 2005. According to publicly available court records, he was found to be in
4 violation of his probation in April 2011. He was not released from probation until March 2013.
5 He registers as a sex offender in the State of California. In August 2013, he applied to drive for
6 Uber. A background report generated by Hirease on August 19, 2013 did not uncover Driver # 3's
7 conviction for felony sexual exploitation of children, his status as a registered sex offender, or the
8 fact that he was on probation until just five months earlier. He drove for Uber in Los Angeles until
9 May 22, 2015 and provided 3,173 rides to consumers, including unaccompanied children.
10 California law allowed Hirease to report Driver # 3's conviction to Uber because he was released
11 from probation within seven years of the background check. Uber's background check process did
12 not identify Driver # 3's conviction or his status as a registered sex offender because Uber's
13 process (a) does not access databases with complete criminal history information, (b) does not
14 access criminal record repositories of unlimited duration, and (c) does not actually go back as far
15 as the law allows. The Live Scan/CALDOJ Process does not have the same limitations and would
16 have identified Driver # 3's criminal history.

17 78. Uber Driver # 4 was convicted of felony kidnapping for ransom with a firearm on
18 November 21, 1994 in Los Angeles, and he was sentenced to a term of eight years to life in prison.
19 He has earlier convictions for a variety of crimes including felony robbery with a firearm, felony
20 sale of cocaine, and driving under the influence in San Bernadino and Pomona. He was released
21 from prison in 2013, and he remains on parole. He applied to drive for Uber in March of 2015. A
22 background report generated by Checkr on March 18, 2015 did not uncover Driver # 4's extensive
23 criminal history. The Checkr report indicates that a county-level check was only performed in San
24 Bernadino, California and Middlesex, Massachusetts, but not in Los Angeles where Driver # 4 had
25 been convicted of kidnapping. California law allowed Checkr to report Driver # 4's conviction to
26 Uber because, within seven years of the background check, he was released from prison after
27 serving a prison sentence for a violent crime. Uber's background check process either failed to

1 identify Uber Driver # 4's criminal history, or identified the history and passed him nonetheless.
2 Uber's background check process did not identify Driver # 4's conviction for kidnapping because
3 Uber's process (a) does not access databases with complete criminal history information, (b) does
4 not access criminal record repositories of unlimited duration, and (c) does not actually go back as
5 far as the law allows. The Live Scan/CALDOJ Process does not have the same limitations and
6 would have identified Driver # 4's criminal history. Upon learning of Driver # 4's criminal
7 history, Uber temporarily deactivated his account. Uber subsequently reactivated his account, and
8 Driver # 4 continues driving for Uber in Los Angeles at this time.

9 79. Uber Driver # 5 was convicted on December 14, 1999 of assault with a firearm in Los
10 Angeles. Publicly available court records show he was sentenced to 14 years in state prison.
11 Under California law, Driver # 5 was required to serve 85% of his sentence and was therefore
12 released from prison no earlier than mid-2011. Upon his release from prison, he became an Uber
13 driver. Uber Driver # 5 drives for Uber in the Los Angeles area. California law allowed Hirease
14 to report Driver # 5's conviction to Uber because he was released from prison within seven years
15 of the background check. Uber's background check process either failed to identify Uber Driver #
16 5's criminal history, or identified the history and passed him nonetheless. On information and
17 belief, Uber's background check process did not identify Driver # 5's conviction for assault
18 because Uber's process (a) does not access databases with complete criminal history information,
19 (b) does not access criminal record repositories of unlimited duration, and (c) does not actually go
20 back as far as the law allows. The Live Scan/CALDOJ Process does not have the same limitations
21 and would have identified Driver # 5's criminal history.

22 80. Uber Driver # 6 was convicted of felony assault with a firearm in 1994. In 2000, he
23 was convicted of residential burglary, and he was sentenced to 13 years in state prison. Under
24 California law, Driver # 6 was not eligible for release from prison until 2010. On information and
25 belief, he drives for Uber in the Los Angeles area. California law allowed Uber's background
26 check provider to report Driver # 6's conviction to Uber because, within seven years of the
27 background check, he was released from prison after serving a sentence for a violent crime.

1 Uber's background check process either failed to identify Uber Driver # 6's criminal history, or
2 identified the history and passed him nonetheless. On information and belief, Uber's background
3 check process did not identify Driver # 6's conviction for residential burglary because Uber's
4 process (a) does not access databases with complete criminal history information, (b) does not
5 access criminal record repositories of unlimited duration, and (c) does not actually go back as far
6 as the law allows. The Live Scan/CALDOJ Process does not have the same limitations and would
7 have identified Driver # 6's criminal history.

8 81. Uber Driver # 7 was convicted in 2010 of 29 felony counts of theft, grand theft, filing
9 false or fraudulent real estate trust deeds, and money laundering. Court records show that he
10 victimized nine people – three of whom were elderly or disabled – and that he stole \$3 million.
11 The victims were only able to recover \$1 million. On information and belief, he drives for Uber in
12 the Los Angeles area. California law allowed Uber's background check provider to report Driver
13 # 7's conviction to Uber because he was convicted within seven years of the background check.
14 Uber's background check process either failed to identify Uber Driver # 7's criminal history, or
15 identified the history and passed him nonetheless. On information and belief, Uber's background
16 check process did not identify Driver # 7's conviction for assault because Uber's process does not
17 access databases with complete criminal history information. The Live Scan/CALDOJ Process
18 does not have the same limitations and would have identified Driver # 7's criminal history.

19 82. Uber Driver # 8 was convicted of felony robbery on July 5, 2006. He was sentenced
20 to serve a term of two years in prison. He was subsequently convicted of driving on a suspended
21 license in 2009 and again in 2010. Also in 2010, Driver # 8 was convicted of a felony for being an
22 ex-felon in possession of a gun. Uber Driver # 8 began driving for Uber in June 2013 in Los
23 Angeles. In March 2014, he was arrested for residential burglary. He was convicted of that crime
24 in August 2014. And he is currently in state prison serving his sentence for this offense. Uber did
25 not deactivate his account until June 2015. California law allowed Hirease to report Driver # 8's
26 criminal history to Uber because he was convicted of robbery and being an ex-felon in possession
27 of a gun within seven years of the background check. Uber's background check process either

1 failed to identify Uber Driver # 8's convictions for residential burglary or being an ex-felon in
2 possession of a gun, or identified the history and passed him nonetheless. On information and
3 belief, Uber's background check process did not identify Driver # 8's conviction for robbery
4 because Uber's process does not access databases with complete criminal history information. The
5 Live Scan/CALDOJ Process does not have the same limitations and would have identified Driver
6 # 8's criminal history.

7 83. Uber Driver # 9's criminal history includes convictions for misdemeanor identity
8 theft in 2008, as well as for felony identity theft in 2012. On information and belief, he drives for
9 Uber in the Los Angeles area. California law allowed Hirease to report Driver # 9's criminal
10 history to Uber because he was convicted of multiple disqualifying offenses within seven years of
11 the background check. Uber's background check process either failed to identify Uber Driver #
12 9's criminal history, or identified the history and passed him nonetheless. On information and
13 belief, Uber's background check process did not identify Driver # 9's convictions for identity theft
14 because Uber's process does not access databases with complete criminal history information. The
15 Live Scan/CALDOJ Process does not have the same limitations and would have identified Driver
16 # 9's criminal history.

17 84. Uber Driver # 10 was convicted of 14 counts of felony identity theft in 2011. After
18 his release from incarceration, he applied to work for a commercial transportation company but
19 was rejected after undergoing a fingerprint-based background check. He began driving for Uber in
20 February of 2013 in Los Angeles, and his account was deactivated on March 25, 2015. California
21 law allowed Uber's background check provider to report Driver # 10's criminal history to Uber
22 because he was convicted of a disqualifying offense within seven years of the background check.
23 Uber's background check process either failed to identify Uber Driver # 10's criminal history, or
24 identified the history and passed him nonetheless. On information and belief, Uber's background
25 check process did not identify Driver # 10's conviction for identity theft because Uber's process
26 does not access databases with complete criminal history information. The Live Scan/CALDOJ
27 Process does not have the same limitations and would have identified Driver # 10's criminal

1 history.

2 85. Uber Driver # 11 was convicted of felony welfare fraud in 2009 and felony burglary
3 in 2011. On information and belief, she drives for Uber in the Los Angeles area. California law
4 allowed Uber's background check provider to report Driver # 11's criminal history to Uber
5 because she was convicted of multiple disqualifying offenses within seven years of the background
6 check. Uber's background check process either failed to identify Uber Driver # 11's criminal
7 history, or identified the history and passed her nonetheless. On information and belief, Uber's
8 background check process did not identify Driver # 11's convictions for welfare fraud and
9 burglary because Uber's process does not access databases with complete criminal history
10 information. The Live Scan/CALDOJ Process does not have the same limitations and would have
11 identified Driver # 11's criminal history.

12 86. Uber Driver # 12 was convicted of multiple felonies on February 26, 2007, including
13 burglary, identity theft, access card fraud, and receiving stolen property. Court records show that
14 on May 25, 2007, he was sentenced to a term of two years in prison, but the court suspended the
15 sentence. Court records show that on June 29, 2009, the court became aware that a new and
16 unrelated criminal case had been filed against Uber Driver # 12. He was subsequently found in
17 violation of his probation. On August 17, 2009, he was ordered to serve the two-year prison
18 sentence, which had been suspended. On information and belief, Uber Driver # 12 drives for Uber
19 in the Los Angeles area. He received a citation on March 3, 2015 while driving for Uber at Los
20 Angeles International Airport. He was driving a car that was not registered to him, but rather to
21 somebody else with no criminal history. California law allowed Uber's background check
22 provider to report Driver # 12's criminal history to Uber because he was released from prison
23 within seven years of the background check. Uber's background check process either failed to
24 identify Uber Driver # 12's criminal history, or identified the history and passed him nonetheless.
25 On information and belief, Uber's background check process did not identify Driver # 12's
26 multiple convictions for fraud and theft offenses because Uber's process does not utilize a unique
27 biometric identifier and does not access databases with complete criminal history information.

1 The Live Scan/CALDOJ Process does not have the same limitations and would have identified
2 Driver # 12's criminal history.

3 87. Uber Driver # 13 was convicted in 2007 of felony taking a vehicle without consent.
4 In August 2008, he was convicted of being an ex-felon with a gun. On information and belief, he
5 drives for Uber in the Los Angeles area. California law allowed Uber's background check
6 provider to report Driver # 13's criminal history to Uber because he was convicted of multiple
7 disqualifying offenses within seven years of the background check. Uber's background check
8 process either failed to identify Uber Driver # 13's criminal history, or identified the history and
9 passed him nonetheless. On information and belief, Uber's background check process did not
10 identify Driver # 13's convictions because Uber's process does not access databases with complete
11 criminal history information. The Live Scan/CALDOJ Process does not have the same limitations
12 and would have identified Driver # 13's criminal history.

13 88. Uber Driver # 14 was convicted in 2011 of two theft-related felonies: filing a forged
14 power of attorney and filing a forged real estate grant deed. He was ordered to pay \$47,500 in
15 restitution, which he had unlawfully obtained from the victim of his crime. According to publicly
16 available court records, he failed to pay the court-ordered restitution, and the court then imposed a
17 two-year prison sentence. On information and belief, he drives for Uber in the Los Angeles area.
18 California law allowed Uber's background check provider to report Driver # 14's criminal history
19 to Uber because he was convicted of multiple disqualifying offenses within seven years of the
20 background check. Uber's background check process either failed to identify Uber Driver # 14's
21 criminal history, or identified the history and passed him nonetheless. On information and belief,
22 Uber's background check process did not identify Driver # 14's conviction for two theft-related
23 felonies because Uber's process does not access databases with complete criminal history
24 information. The Live Scan/CALDOJ Process does not have the same limitations and would have
25 identified Driver # 14's criminal history.

26 89. Uber Driver # 15 was convicted of misdemeanor driving under the influence in 2007.
27 He drove for Uber in the Los Angeles area. Uber terminated his driving privileges in January of

1 2015 after a well-publicized incident in which he was accused of sexually assaulting a passenger.
2 Uber has represented that it disqualifies drivers with convictions for driving under the influence
3 going back 10 years. Uber's background check process either failed to identify Uber Driver # 15's
4 criminal history, or identified the history and passed him nonetheless. On information and belief,
5 Uber's background check process did not identify Driver # 15's conviction for driving under the
6 influence because Uber's process does not access databases with complete criminal history
7 information. The Live Scan/CALDOJ Process does not have the same limitations and would have
8 identified Driver # 15's criminal history.

9 90. Uber Driver # 16 was convicted of misdemeanor driving under the influence and
10 driving with a suspended license in 2010. On information and belief, he drives for Uber in the Los
11 Angeles area. Uber has represented that it disqualifies drivers with convictions for driving under
12 the influence going back 10 years, and currently represents that it disqualifies drivers with
13 convictions for driving under the influence going back seven years. Uber's background check
14 process either failed to identify Uber Driver # 16's criminal history, or identified the history and
15 passed him nonetheless. On information and belief, Uber's background check process did not
16 identify Driver # 16's conviction for driving under the influence because Uber's process does not
17 access databases with complete criminal history information. The Live Scan/CALDOJ Process
18 does not have the same limitations and would have identified Driver # 16's criminal history.

19 91. Uber Driver # 17 was convicted of misdemeanor driving under the influence in 2011.
20 On information and belief, he drives for Uber in the Los Angeles area. Uber has represented that it
21 disqualifies drivers with convictions for driving under the influence going back 10 years, and
22 currently represents that it disqualifies drivers with convictions for driving under the influence
23 going back seven years. Uber's background check process either failed to identify Uber Driver #
24 17's criminal history, or identified the history and passed him nonetheless. On information and
25 belief, Uber's background check process did not identify Driver # 17's conviction for driving
26 under the influence because Uber's process does not access databases with complete criminal
27 history information. The Live Scan/CALDOJ Process does not have the same limitations and

1 would have identified Driver # 17's criminal history.

2 92. Uber Driver # 18 was convicted of misdemeanor driving under the influence in 2006.
3 On information and belief, he drives for Uber in the Los Angeles area. Uber has represented that it
4 disqualifies drivers with convictions for driving under the influence going back 10 years, and
5 currently represents that it disqualifies drivers with convictions for driving under the influence
6 going back seven years. Uber's background check process either failed to identify Uber Driver #
7 18's criminal history, or identified the history and passed him nonetheless. On information and
8 belief, Uber's background check process did not identify Driver # 18's conviction for driving
9 under the influence because Uber's process does not access databases with complete criminal
10 history information. The Live Scan/CALDOJ Process does not have the same limitations and
11 would have identified Driver # 18's criminal history.

12 93. Uber Driver # 19 was convicted of misdemeanor driving under the influence in 2013.
13 On information and belief, he drives for Uber in the San Francisco area. Uber has represented that
14 it disqualifies drivers with convictions for driving under the influence going back 10 years, and
15 currently represents that it disqualifies drivers with convictions for driving under the influence
16 going back seven years. Uber's background check process either failed to identify Uber Driver #
17 19's criminal history, or identified the history and passed him nonetheless. On information and
18 belief, Uber's background check process did not identify Driver # 19's conviction for driving
19 under the influence because Uber's process does not access databases with complete criminal
20 history information. The Live Scan/CALDOJ Process does not have the same limitations and
21 would have identified Driver # 19's criminal history.

22 94. Uber Driver # 20 was convicted in 2007 of misdemeanor reckless driving and driving
23 in excess of 100 miles per hour. On information and belief, he has been driving for Uber since at
24 least December 2013 in the Los Angeles area. Uber represents that it disqualifies drivers with
25 convictions for reckless driving going back seven years. Uber's background check process either
26 failed to identify Uber Driver # 20's criminal history, or identified the history and passed him
27 nonetheless. On information and belief, Uber's background check process did not identify Driver

1 # 20's conviction for reckless driving because Uber's process does not access databases with
2 complete criminal history information. The Live Scan/CALDOJ Process does not have the same
3 limitations and would have identified Driver # 20's criminal history.

4 95. Uber Driver # 21 sustained a misdemeanor conviction in March 2013 for driving
5 under the influence. In July 2013, he was convicted of a felony conviction for possession of
6 methamphetamine. On information and belief, he drives for Uber in the Los Angeles area. Uber's
7 background check process either failed to identify Uber Driver # 21's criminal history, or
8 identified the history and passed him nonetheless. On information and belief, Uber's background
9 check process did not identify Driver # 21's convictions because Uber's process does not access
10 databases with complete criminal history information. The Live Scan/CALDOJ Process does not
11 have the same limitations and would have identified Driver # 21's criminal history.

12 96. Uber Driver # 22 sustained a felony conviction for maintaining a place for the sales of
13 methamphetamine in April 2012. On information and belief, he drives for Uber in the Los
14 Angeles area. Uber's background check process either failed to identify Uber Driver # 22's
15 criminal history, or identified the history and passed him nonetheless. On information and belief,
16 Uber's background check process did not identify Driver # 22's conviction because Uber's process
17 does not access databases with complete criminal history information. The Live Scan/CALDOJ
18 Process does not have the same limitations and would have identified Driver # 22's criminal
19 history.

20 97. Some Uber drivers evade the background check process entirely by using an account
21 belonging to another person. At this time, the People have identified at least three Uber drivers
22 who used another person's account to drive for Uber even though they did not hold a valid driver's
23 license.

24 98. Uber Driver # 23 received a citation at SFO on May 4, 2014. He provided San
25 Francisco Police with a driver's license that had expired in December of 2007. When the citing
26 police officer noticed that the photograph on the driver's Uber profile did not look like Driver #
27 23, Driver # 23 stated that he was using his brother's Uber account.

1 99. Uber Driver # 24 was taken into custody at SFO on May 21, 2014. Uber Driver # 24
2 provided San Francisco Police with two different names, neither of which matched any valid
3 driver's license. When the San Francisco Police officer noticed that the photograph on the driver's
4 Uber profile did not look like Driver # 24, Driver # 24 stated that he was using the account of his
5 cousin.

6 100. Uber Driver # 25 received a citation at LAX on June 7, 2015. Uber Driver # 25 did
7 not hold a valid driver's license. His interim driver's license had expired. Driver # 25 stated that
8 he was leasing his car from someone else and using their Uber account.

9 Uber's Misleading Statements In Response To Incidents Involving Its Drivers

10 101. During 2014 and 2015 Uber has consistently repeated its misleading statements
11 about the quality of its background checks and commitment to safety in response to a series of
12 well-publicized incidents involving Uber drivers. Trotting out the company line about its
13 background check process is a corporate policy set at the very top of the organization. In
14 September, 2013 Uber CEO Travis Kalanick wrote in an internal email, "we need to make sure
15 that these writers don't come away thinking we are responsible, even when things do go bad. . .
16 [T]hese writers are starting to think that we are somehow liable for these incidents that aren't even
17 real in the first place."

18 102. In January 2014, online news site PandoDaily.com reported that an Uber driver in
19 San Francisco who had been accused of verbally and physically assaulting a passenger had a
20 significant criminal history which should have disqualified him from becoming an Uber driver. In
21 June 2014, Forbes.com reported that the driver had been on probation for a battery conviction
22 when Uber hired him in October 2013. When questioned about the decision to allow an applicant
23 with a conviction for violent crime to drive for Uber, spokesperson Kasselmann told NBC Bay Area
24 News that "Uber works with Hirease to conduct stringent background checks, which all drivers
25 must undergo and clear to partner with Uber." Kasselmann then claimed that the driver "had a
26 clean background check in October."

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